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By:  Powell S.B. No. 1859

A BILL TO BE ENTITLED

AN ACT

relating to regulating the servicing of certain student loans, requiring the occupational licensing of certain student loan servicers, and the designation of a student loan ombudsman within the Texas Department of Banking; authorizing fees; authorizing civil and administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 52.335(d), Education Code, is amended to read as follows:

(d)  The disclosure required under this section must:

(1)  identify the types of education loans included in the institution's estimates; and

(2)  include:

(A)  a statement that the disclosure is not a complete and official record of the student's education loan debt;

(B)  an explanation regarding why the disclosure may not be complete or accurate, including an explanation that for a transfer student, the institution's estimates regarding state loans reflect only state loans incurred by the student for attendance at the institution; [~~and~~]

(C)  a statement that the institution's estimates are general in nature and are not intended as a guarantee or promise; and

(D)  the contact information for the student loan ombudsman designated under Section 161.051, Finance Code.

SECTION 2.  Subtitle E, Title 3, Finance Code, is amended by adding Chapter 161 to read as follows:

CHAPTER 161. STUDENT LOAN SERVICERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001.  DEFINITIONS. In this chapter:

(1)  "Banking commissioner" means the banking commissioner of Texas or a person designated by the banking commissioner and acting under the banking commissioner's direction and authority.

(2)  "Consumer reporting agency" has the meaning assigned by Section 20.01(5), Business & Commerce Code.

(3)  "Department" means the Texas Department of Banking.

(4)  "Finance commission" means the Finance Commission of Texas.

(5)  "Nationwide Multistate Licensing System and Registry" or "registry" has the meaning assigned by Section 151.2031.

(5)  "Ombudsman" means the student loan ombudsman designated under Section 161.051.

(7)  "Servicing" means:

(A)  receiving scheduled periodic payments from a student loan borrower or notification of those payments;

(B)  applying student loan payments to the borrower's account under the terms of:

(i)  the loan; or

(ii)  the contract governing the servicing of the loan;

(C)  maintaining, on the loan holder's behalf, account records for a student loan during a period when no loan payment is required;

(D)  communicating with the student loan borrower regarding the loan, on the loan holder's behalf; and

(E)  interacting with a student loan borrower to facilitate the servicing of the student loan, as described by Paragraphs (A)-(D), including performing activities to prevent the loan's default and the default of any obligations arising from the loan.

(8)  "Student loan" means a loan that is extended to a student loan borrower solely to finance postsecondary education expenses. The term does not include open-end credit or a loan secured by real property.

(9)  "Student loan borrower" or "borrower" means:

(A)  a student who has obtained or agreed to pay a student loan;

(B)  a former student with a student loan; or

(C)  a person who has obtained or agreed to pay a student loan for the benefit of a student, regardless of whether the student is currently enrolled at a postsecondary educational institution.

(10)  "Student loan servicer" means an entity responsible for servicing a student loan.

Sec. 161.002.  RULES. The finance commission shall adopt rules necessary to administer, implement, and enforce this chapter.

SUBCHAPTER B. STUDENT LOAN OMBUDSMAN

Sec. 161.051.  STUDENT LOAN OMBUDSMAN. (a) The banking commissioner shall designate a qualified employee of the department as student loan ombudsman to provide assistance to student loan borrowers in this state and to other persons as provided by this subchapter. Subject to the availability of funds, the department may hire additional staff as necessary to assist the ombudsman in carrying out the ombudsman's duties and performing the activities specified by this subchapter.

(b)  The ombudsman and the banking commissioner shall confer at least annually regarding:

(1)  student loan servicer complaints;

(2)  the proper referral process for student loan servicer complaints; and

(3)  the reporting requirement of Section 161.054.

Sec. 161.052.  DUTIES OF OMBUDSMAN. The ombudsman shall:

(1)  receive, review, and attempt to resolve complaints from student loan borrowers, including the attempted resolution of complaints in collaboration with institutions of higher education, student loan servicers, and any other participants in the student loan lending process;

(2)  refer to the banking commissioner any complaint received concerning a student loan servicer;

(3)  compile and analyze data on complaints made by student loan borrowers;

(4)  assist student loan borrowers in understanding the borrower's rights and responsibilities under the terms of a student loan or related contract;

(5)  provide information to the public, state agencies, the legislature, and other interested persons regarding the problems and concerns of student loan borrowers and make recommendations to the banking commissioner for resolving those problems and concerns;

(6)  analyze and monitor the development and implementation of federal and state law and policy relating to student loans and recommend any necessary changes to the banking commissioner;

(7)  review the complete student loan history of a student loan borrower who has provided written consent for the review;

(8)  disseminate information concerning the availability of the ombudsman to assist the following with respect to student loan servicing matters or concerns:

(A)  student loan borrowers and potential student loan borrowers;

(B)  institutions of higher education;

(C)  student loan servicers; and

(D)  other participants in student loan lending in this state; and

(9)  take other actions as necessary to fulfill the duties of the ombudsman as provided by this subchapter.

Sec. 161.053.  EDUCATION COURSE FOR STUDENT LOAN BORROWERS. Not later than October 1, 2022, the ombudsman, in consultation with the Texas Higher Education Coordinating Board, shall establish and maintain a student loan borrower education course. The course must include educational presentations and materials regarding student loans, including information regarding:

(1)  lending terms;

(2)  loan documentation requirements;

(3)  monthly payment obligations;

(4)  income-driven repayment options;

(5)  loan forgiveness programs; and

(6)  disclosure requirements.

Sec. 161.054.  ANNUAL REPORT. Not later than December 31 of each year, the ombudsman shall submit an annual report to the banking commissioner and the commissioner of the Texas Higher Education Coordinating Board. The report must:

(1)  address the implementation of this subchapter;

(2)  address the effectiveness of the ombudsman position in providing the types of assistance described by this subchapter; and

(3)  contain recommendations for department action to improve the regulation of student loan servicers under this chapter.

SUBCHAPTER C. STUDENT LOAN SERVICER LICENSE

Sec. 161.101.  STUDENT LOAN SERVICER LICENSE REQUIRED. (a) Except as provided by Subsection (b), a person may not act, directly or indirectly, as a student loan servicer in this state unless the person is licensed under this subchapter.

(b)  The following persons are exempt from licensure under this subchapter:

(1)  a financial institution as defined by Section 201.101;

(2)  a wholly owned subsidiary of a bank or credit union; and

(3)  an operating subsidiary in which each owner of the subsidiary is wholly owned by the same bank or credit union.

Sec. 161.102.  APPLICATION AND ACCOMPANYING FEE. (a) An application for a student loan servicer license must be:

(1)  in writing;

(2)  under oath; and

(3)  on the form prescribed by the banking commissioner.

(b)  Except as provided by Section 161.106, an applicant for a student loan servicer license must:

(1)  submit a completed application together with the payment of applicable fees through the Nationwide Multistate Licensing System and Registry; and

(2)  provide a recent financial statement and any other information required by the banking commissioner.

(c)  An application for a student loan servicer license must be accompanied by:

(1)  a nonrefundable license fee of $5,000 or other amount determined by the banking commissioner; and

(2)  a nonrefundable investigation fee in an amount determined by the banking commissioner.

Sec. 161.103.  CRIMINAL AND OTHER BACKGROUND CHECKS. (a) An applicant for a student loan servicer license shall provide, in the form and manner prescribed by the banking commissioner and acceptable to the Nationwide Multistate Licensing System and Registry, information concerning the applicant's identity, including:

(1)  fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive the information to conduct a state and national criminal background check; and

(2)  personal history and experience information in a form prescribed by the Nationwide Multistate Licensing System and Registry, including the submission of authorization for the Nationwide Multistate Licensing System and Registry and the commissioner to obtain:

(A)  an independent credit report obtained from a consumer reporting agency; and

(B)  information related to any administrative, civil, or criminal findings by a governmental jurisdiction.

(b)  For purposes of this section and to reduce the points of contact that the Federal Bureau of Investigation may have to maintain for purposes of Subsection (a)(1), the banking commissioner may use the Nationwide Multistate Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice, any governmental agency, or any other source at the banking commissioner's direction.

(c)  For purposes of this section and to reduce the points of contact that the banking commissioner may have to maintain for purposes of Subsection (a) or (b), the commissioner may use the Nationwide Multistate Licensing System and Registry as a channeling agent for requesting information from and distributing information to and from any source as directed by the banking commissioner.

Sec. 161.104.  ABANDONMENT OF APPLICATION. (a) The banking commissioner may consider an application for a license abandoned if the applicant fails to respond to a request for information required under this subchapter. The commissioner shall notify the applicant, in writing, that if the applicant fails to submit the requested information not later than the 60th day after the date of the request, the application is considered abandoned.

(b)  The banking commissioner is not required to refund an application filing fee paid before the date an application is considered abandoned under this section.

(c)  Abandonment of an application under this section does not preclude the applicant from submitting a new application for a license under Section 161.102.

Sec. 161.105.  ISSUANCE OF LICENSE. (a)  On submission of an application for an initial license and the payment of the license fee and investigation fee under Section 161.102, the banking commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant.

(b)  The banking commissioner shall issue a license if:

(1)  the commissioner finds that:

(A)  the applicant's financial condition is sound;

(B)  the applicant meets the prescribed qualifications; and

(C)  the applicant's business will be conducted fairly and lawfully, according to state and federal law, and in a manner commanding the confidence and trust of the community;

(2)  the commissioner has no knowledge that:

(A)  the applicant or a person on the applicant's behalf knowingly has made any incorrect statement of a material fact in the application, or in a report or statement made under this chapter; and

(B)  the applicant or a person on the applicant's behalf knowingly has omitted a material fact necessary to give the banking commissioner any information required by the commissioner; and

(3)  the applicant has satisfied all other requirements for licensure.

(c)  Not more than one place of business may be maintained under the same license, but the banking commissioner may issue more than one license to the same license holder on compliance with the provisions of this chapter as to each new license.

Sec. 161.106.  AUTOMATIC ISSUANCE OF LIMITED LICENSE FOR CERTAIN SERVICERS. (a) The banking commissioner shall automatically issue, in accordance with this section, a limited license to an applicant who:

(1)  is servicing a student loan in this state under a contract with the United States Department of Education under 20 U.S.C. Section 1087f; and

(2)  meets the requirements of this section.

(b)  An applicant for a license under this section:

(1)  is exempt from the application procedures established under Section 161.102, other than the requirement of Section 161.102(c);

(2)  is exempt from the requirements of Subchapter D if the applicant is only servicing federal student loans in this state; and

(3)  is subject to and must comply with Subchapter D, if the person is also servicing nonfederal student loans in this state.

(c)  The finance commission by rule shall prescribe the procedures to document eligibility for the issuance of a license under this section.

(d)  Not later than the seventh day after the date on which a license holder issued a limited license under this section receives notice of the expiration, revocation, or termination of a contract awarded to the license holder by the United States secretary of education under 20 U.S.C. Section 1087f, the license holder shall send written notice of that fact to the banking commissioner. To continue to service student loans in this state, the license holder must satisfy all requirements for licensure under this subchapter not later than the 30th day after the date the license holder received notice of the contract's expiration, revocation, or termination, unless the license holder also holds a license under this subchapter to service nonfederal student loans in this state. If the license holder fails to satisfy the licensure requirements before the expiration of the period prescribed by this subsection, the commissioner shall immediately suspend the limited license issued to the holder under this section.

(e)  If the servicing of a student loan in this state is not conducted by a person under a contract awarded by the United States secretary of education under 20 U.S.C. Section 1087f, this section does not prevent the banking commissioner from issuing an order to temporarily or permanently prohibit the person from acting as a student loan servicer.

(f)  Unless otherwise prohibited by federal law, if the servicing of a student loan is conducted by a person under a contract awarded by the United States secretary of education under 20 U.S.C. Section 1087f, this section does not prevent the banking commissioner from issuing a cease and desist order or injunction against the student loan servicer to cease activities in violation of this chapter.

Sec. 161.107.  TERM OF LICENSE.   A license issued under Section 161.105 expires at the close of business on December 31 of the year of issuance, unless the license is renewed, surrendered, suspended, or revoked under this subchapter or Subchapter D.

Sec. 161.108.  LICENSE RENEWAL. (a) The banking commissioner may renew a student loan servicer license on or before the license's expiration date if the student loan servicer submits an application containing all required documents and accompanying fees as provided by Section 161.102.

(b)  Any renewal application submitted after December 1 must be accompanied by a late fee of $100 per day.

(c)  The banking commissioner may not renew a license until the commissioner receives the license fee, investigation fee, and any applicable late fees and the applicable fees described by Section 161.102(b)(1) are paid to the registry. If an application for a renewal license is submitted on or before the date the license expires, the license sought to be renewed continues in full force and effect until the banking commissioner issues the renewal license or until the commissioner notifies the license holder in writing of the commissioner's refusal to issue the renewal license together with the grounds on which that refusal is based. The banking commissioner may refuse to issue a renewal license on any ground on which the commissioner might refuse to issue an initial license.

Sec. 161.109.  CHANGE IN INFORMATION PROVIDED IN APPLICATION.  An applicant or license holder shall notify the banking commissioner, in writing, of any change in the information provided in the applicant's initial application for a license or the applicant's most recent renewal application for the license, as applicable, not later than the 10th business day after the date of the occurrence of the event that results in the information becoming inaccurate.

Sec. 161.110.  SURRENDER OF LICENSE. (a) Not later than the 15th day after the date a license holder ceases to engage in the business of student loan servicing in this state for any reason, the license holder shall provide written notice of surrender to the banking commissioner and shall surrender to the commissioner the license holder's license for each location in which the license holder has ceased to engage in business. The written notice of surrender must identify the location where the records of the license holder will be stored and the name, address, and telephone number of an individual authorized to provide access to the records.

(b)  The surrender of a license does not reduce or eliminate the license holder's civil or criminal liability arising from an act or omission occurring before the surrender of the license, including any administrative action taken by the banking commissioner to:

(1)  revoke or suspend a license;

(2)  assess an administrative penalty; or

(3)  exercise any other authority provided to the commissioner.

Sec. 161.111.  NAME AND LOCATION ON LICENSE. A license issued under Section 161.105 must state:

(1)  the name of the license holder; and

(2)  the address of the office from which the servicing of the student loans is to be conducted by the license holder.

Sec. 161.112.  CHANGE OF LOCATION. Not later than the 31st day before the date of the change, a license holder must notify the department in writing of the license holder's intent to change the location of the license holder's place of business.

Sec. 161.113.  TRANSFER OR ASSIGNMENT OF LICENSE. A license under this subchapter is not transferable or assignable.

SUBCHAPTER D. LICENSE REVOCATION AND SUSPENSION AND OTHER ACTIONS AGAINST LICENSE HOLDERS

Sec. 161.151.  INSPECTIONS; INVESTIGATIONS. (a) The banking commissioner may conduct inspections of a student loan servicer licensed under this chapter as the commissioner determines necessary to determine whether the student loan servicer is complying with this chapter and applicable rules. The inspections may include inspection of the books, records, documents, operations, and facilities of the student loan servicer and access to any documents required under rules adopted under this chapter. The commissioner may share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency.

(b)  On the signed written complaint of a person, the banking commissioner shall investigate the actions and records of a student loan servicer licensed under this chapter if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides reasonable cause. The commissioner, before commencing an investigation, shall notify the student loan servicer in writing of the complaint and that the commissioner intends to investigate the matter.

(c)  For reasonable cause, the banking commissioner at any time may investigate a student loan servicer licensed under this chapter to determine whether the student loan servicer is complying with this chapter and applicable rules.

(d)  The banking commissioner may conduct an undercover or covert investigation only if the commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of this chapter.

(e)  The finance commission by rule shall provide guidelines to govern an inspection or investigation, including rules to:

(1)  determine the information and records to which the banking commissioner may demand access during an inspection or an investigation; and

(2)  establish what constitutes reasonable cause for an investigation.

(f)  Information obtained by the banking commissioner during an inspection or investigation is confidential unless disclosure of the information is permitted or required by other law.

(g)  The banking commissioner may share information gathered during an inspection or investigation with any state or federal agency.

(h)  The banking commissioner may require reimbursement of expenses for each examiner for on-site examination or investigation of a license holder if records are located out of state or if the review is considered necessary beyond the routine examination process. The finance commission by rule shall set the maximum amount for the reimbursement of expenses authorized under this subsection.

Sec. 161.152.  ISSUANCE AND ENFORCEMENT OF SUBPOENA. (a) During an investigation, the banking commissioner may issue a subpoena that is addressed to a peace officer of this state or other person authorized by law to serve citation or perfect service. The subpoena may require a person to give a deposition, produce documents, or both.

(b)  If a person disobeys a subpoena or if a person appearing in a deposition in connection with the investigation refuses to testify, the banking commissioner may petition a district court in Travis County to issue an order requiring the person to obey the subpoena, testify, or produce documents relating to the matter. The court shall promptly set an application to enforce a subpoena issued under Subsection (a) for hearing and shall cause notice of the application and the hearing to be served upon the person to whom the subpoena is directed.

Sec. 161.153.  SUSPENSION, REVOCATION, OR REFUSAL TO RENEW LICENSE. (a) The banking commissioner may suspend, revoke, or refuse to renew a license issued under Section 161.105, or may take any other action, if the commissioner finds that:

(1)  the license holder has violated this chapter or a rule adopted under this chapter; or

(2)  a fact or condition exists that, if the fact or condition had existed at the time of the original application for the license, clearly would have warranted a denial of the license.

(b)  The banking commissioner may not abate a license fee if the license is surrendered, revoked, or suspended before the expiration of the period for which the license was issued.

Sec. 161.154.  CIVIL PENALTY; INJUNCTIVE RELIEF. (a) A person who violates this chapter is liable to this state for a civil penalty in an amount not to exceed:

(1)  $10,000 for the first violation; and

(2)  $20,000 for the second violation and each subsequent violation.

(b)  Whenever it appears to the banking commissioner that a person has violated, is violating, or is about to violate this chapter or a rule adopted under this chapter, or that a license holder, or an owner, director, officer, member, partner, shareholder, trustee, employee, or agent of a license holder, has committed fraud, engaged in an unauthorized activity, or made a misrepresentation, the attorney general, on behalf of the banking commissioner, may bring a civil action to:

(1)  enjoin the violation or potential violation;

(2)  recover a civil penalty under this section; or

(3)  enjoin the violation or potential violation, recover a civil penalty, or both.

(c)  The attorney general is entitled to recover reasonable expenses incurred in obtaining injunctive relief, recovering civil penalties, or both, under this section, including reasonable attorney's fees and court costs.

Sec. 161.155.  SURETY BOND. (a)  A license holder shall file with the banking commissioner a surety bond obtained from a surety company authorized to do business in this state.

(b)  The bond must be:

(1)  in an amount of at least $30,000, as determined by the finance commission; and

(2)  in favor of:

(A)  this state for the benefit of a person damaged by a violation of this chapter; and

(B)  a person damaged by a violation of this chapter.

(c)  When an action is brought on a license holder's bond, the banking commissioner may require the filing of a new bond. Immediately on recovery on any action on the bond, the license holder shall file a new bond.

SUBCHAPTER E. REPORTING AND OTHER REQUIREMENTS; PENALTIES

Sec. 161.201.  FAILURE TO COMPLY WITH FEDERAL LAW; VIOLATION OF CHAPTER. A violation of the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or any other federal law or regulation relating to the servicing of a student loan is considered a violation of this chapter, and a basis on which the banking commissioner may take enforcement action under Section 161.153 or 161.154.

Sec. 161.202.  REPORTS; ADMINISTRATIVE PENALTY FOR FAILURE TO FILE. (a) Not later than December 1 of each year, a license holder shall file a sworn report with the banking commissioner that contains any information the commissioner may require concerning the business conducted by the license holder in this state during the preceding calendar year. The report must be made in the form and manner prescribed by the banking commissioner.

(b)  A license holder shall submit to the Nationwide Multistate Licensing System and Registry:

(1)  a student loan servicer call report of condition, in the form and manner and as frequently as required by the registry, that must include any other information required by the registry; and

(2)  any other report to, or through, the registry under an arrangement for reporting and sharing information as required by law.

(c)  A license holder violates this chapter if the license holder negligently makes a false statement or knowingly makes an omission of material fact in connection with a report or information filed with:

(1)  the banking commissioner;

(2)  the Nationwide Multistate Licensing System and Registry; or

(3)  a federal or state agency through the Nationwide Multistate Licensing System and Registry.

(d)  A license holder that fails to comply with Subsection (a) or (b) is subject to:

(1)  an administrative penalty in an amount not to exceed $100 for each day of noncompliance; and

(2)  the revocation or suspension of the license holder's license under Section 161.153.

(e)  In determining the amount of the administrative penalty under Subsection (d)(1), the banking commissioner must consider:

(1)  the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2)  the person's history of previous violations;

(3)  the amount necessary to deter a future violation; and

(4)  any other matter that justice may require.

(f)  The banking commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

Sec. 161.203.  ANNUAL FEE. A license holder shall pay to the banking commissioner an annual fee in an amount set by rule of the finance commission. The fee must be in an amount sufficient to cover the annual costs of implementing and enforcing this chapter.

SUBCHAPTER F. CONDUCT OF STUDENT LOAN SERVICES BUSINESS; PROHIBITED ACTS

Sec. 161.251.  STUDENT LOAN SERVICER TO CONDUCT BUSINESS UNDER NAME AND LOCATION ON LICENSE. (a) A license holder may not conduct business under this chapter under a name other than the name stated on the license.

(b)  A license holder may not conduct business under this chapter at a location other than the address stated on the license.

Sec. 161.252.  MAINTENANCE AND AVAILABILITY OF STUDENT LOAN RECORDS. (a) To the extent allowed under federal law and unless a different retention period is prescribed by federal law, a licensed student loan servicer and a person exempt from licensure under Section 161.101(b) shall maintain adequate records of each student loan transaction, as prescribed by the department, for at least two years after the earlier of:

(1)  the date of the final student loan payment; or

(2)  if the student loan is assigned, the date of assignment.

(b)  Not later than the fifth business day after the date the banking commissioner requests to examine a record of a student loan transaction, the student loan servicer shall:

(1)  make the record available to the commissioner for inspection; or

(2)  send the commissioner a copy of the requested record by:

(A)  registered or certified mail, return receipt requested; or

(B)  an express delivery carrier that provides a proof of delivery receipt.

(c)  The banking commissioner may grant a license holder an extension of time to comply with a record request under Subsection (b).

Sec. 161.253.  RESPONSE TO ACCOUNT INQUIRY; APPLICATION OF CERTAIN PAYMENTS. (a)  Except as otherwise provided under federal law, a student loan servicer, on receipt of a written account inquiry from a borrower or the borrower's representative, shall:

(1)  acknowledge receipt of the inquiry within 10 business days;

(2)  provide information in response to the inquiry, and, if applicable:

(A)  the action to be taken to correct the account; or

(B)  an explanation of the position taken by the loan servicer that the borrower's account is correct;

(3)  inquire about how to apply any overpayment made by the borrower to the loan account;

(4)  apply partial payments made by the borrower in a manner that minimizes late fees and negative credit reporting; and

(5)  evaluate the borrower for eligibility for an income-driven repayment program that may be available before placing the borrower in forbearance or default.

(b)  A student loan servicer must provide information in response to a written account inquiry described by Subsection (a)(2) not later than the 30th business day after the date of receipt of the inquiry.

(c)  An instruction from the borrower or the borrower's representative on how to apply an overpayment to a student loan under Subsection (a)(3) remains in effect during the term of the loan until the borrower or the borrower's representative provides different instructions. For purposes of this section, "overpayment," with respect to a student loan, means payment in an amount that is more than the monthly amount due.

(d)  If there are multiple loans on a borrower's account with an equal stage of delinquency, a student loan servicer shall satisfy the requirements of Subsection (a)(4) by applying partial payments to satisfy as many individual loan payments as possible on a borrower's account. For purposes of this section, "partial payment," with respect to an account that contains multiple individual student loans, means payment in an amount that is less than the amount necessary to satisfy the outstanding payments due on all of the individual student loans in the borrower's account.

Sec. 161.254.  SALE OR OTHER TRANSFER OF LOAN SERVICING. (a) If a sale, assignment, or other transfer of the servicing of a student loan results in a change in the identity of the student loan servicer to which a student loan borrower is required to send loan payments or direct any communications concerning the loan, the student loan servicer must:

(1)  require, as a condition of the sale, assignment, or other transfer, that the new student loan servicer honor and preserve the availability of all benefits originally represented as being available to the borrower during the term of the loan, including any benefits for which the borrower has not yet qualified;

(2)  transfer to the new student loan servicer all information regarding:

(A)  the borrower; and

(B)  the borrower's student loan and loan account, including:

(i)  the repayment status of the borrower; and

(ii)  any benefits associated with the loan;

(3)  complete the transfer of information required under Subdivision (2) not later than the 45th calendar day after the date of the sale, assignment, or other transfer of the servicing of the loan; and

(4)  complete the sale, assignment, or other transfer of the servicing of the loan not later than the seventh calendar day before the date on which the next loan payment becomes due.

(b)  If a student loan servicer obtains the right to service a student loan, the loan servicer shall adopt policies and procedures to verify that the loan servicer has received the information specified in Subsection (a)(2).

Sec. 161.255.  PROHIBITED ACTIONS. A student loan servicer may not:

(1)  directly or indirectly employ any scheme, device, or artifice to defraud or mislead student loan borrowers;

(2)  engage in any unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student loan, including misrepresenting:

(A)  the amount, nature, or terms of any fee or payment due or claimed to be due on the loan;

(B)  the terms of the loan agreement; or

(C)  the borrower's obligations under the loan;

(3)  obtain property by fraud or misrepresentation;

(4)  misapply loan payments to the outstanding student loan balance;

(5)  provide inaccurate information to a consumer reporting agency;

(6)  fail to report, at least annually, both the favorable and unfavorable payment history of the student loan borrower to a nationally recognized consumer reporting agency if the student loan servicer regularly reports payment history information to consumer reporting agencies;

(7)  refuse to communicate with an authorized representative of the student loan borrower who provides a written authorization signed by the borrower, provided the student loan servicer adopts reasonable procedures to verify that the representative is in fact authorized to act on the borrower's behalf;

(8)  make any false statement or knowingly and wilfully make any omission of a material fact in connection with:

(A)  information or a report filed with a governmental agency; or

(B)  an investigation conducted by the banking commissioner or another governmental agency;

(9)  fail to respond within 15 business days to communications from the department, or within a shorter, reasonable period as may be requested by the department; or

(10)  fail to respond within 15 business days to a consumer complaint submitted to the student loan servicer by the department, except that, if necessary, the student loan servicer may request an extension of time, not to exceed 45 business days, to respond to the complaint, if the request is accompanied by an explanation on why granting an extension of time is reasonable and necessary.

SUBCHAPTER G. STUDENT LOAN BORROWER REMEDIES

Sec. 161.301.  ACTIONS AND COUNTERCLAIMS BY BORROWER. (a) A student loan borrower who suffers an ascertainable loss of money as a result of an action taken, omission made, or practice employed by a student loan servicer in violation of this chapter or a rule adopted under this chapter may bring an action or assert a counterclaim in court against the student loan servicer.

(b)  In an action brought under this section, the court, in addition to awarding any other appropriate legal or equitable relief, may award an amount not to exceed three times the actual damages sustained by the student loan borrower. The court may also award reasonable attorney's fees, filing fees, and reasonable costs of suit.

Sec. 161.302.  REMEDIES NOT EXCLUSIVE. The remedies provided by this chapter are not exclusive. A student loan borrower is not required to exhaust administrative remedies established under this chapter or any other applicable law before proceeding under this chapter.

SECTION 3.  As soon as practicable after the effective date of this Act, the Finance Commission of Texas shall adopt rules as necessary to implement Chapter 161, Finance Code, as added by this Act.

SECTION 4.  The initial report required by Section 161.054, Finance Code, as added by this Act, must be submitted not later than the first anniversary of the date the first student loan ombudsman is designated to serve in that capacity.

SECTION 5.  Notwithstanding Chapter 161, Finance Code, as added by this Act, a student loan servicer is not required to hold a license under that chapter to act as a student loan servicer in this state before June 1, 2022.

SECTION 6.  (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2021.

(b)  The following provisions take effect June 1, 2022:

(1)  Sections 161.101, 161.106, 161.251, and 161.252, Finance Code, as added by this Act; and

(2)  Subchapters D and E, Finance Code, as added by this Act.